

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 15 1999

PATRICK FISHER
Clerk

ROLLY O. KINNELL,

Petitioner-Appellant,

v.

THE STATE OF KANSAS,

Respondent-Appellee.

No. 98-3225

(D.C. No. 98-CV-3188)

(D. Kan.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BALDOCK**, and **HENRY**, Circuit Judges.**

Petitioner Rolly O. Kinnell is well known to this court. See Kinnell v. Department of Justice, No. 98-3085, 1998 WL 642411 (10th Cir. 1998) (unpublished); Kinnell v. Fort Scott Police Dept., No. 95-3412, 1996 WL 207402 (10th Cir. 1996) (unpublished); Kinnell v. Stephan, No. 92-3066, 1992 WL 302410 (10th Cir. 1992) (unpublished); Kinnell v. State of Kansas, Nos. 91-3315 & 16, 1992 WL 92777 (10th Cir. 1992)

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

(unpublished); Kinnell v. Hutches, No. 91-3293, 1992 WL 95409 (10th Cir. 1992)
(unpublished); Kinnell v. Connally, No. 91-3148, 1991 WL 202768 (10th Cir. 1991)
(unpublished); Kinnell v. Roberts, No. 90-3363, 1991 WL 65259 (10th Cir. 1991)
(unpublished). We have dismissed four of his seven reported appeals as frivolous. The other three we have summarily affirmed.

In this latest chapter, Kinnell filed a pro se petition for a writ of habeas corpus claiming Kansas state officials have conspired to deprive him of his constitutional rights by proceeding to prosecute him for criminal conduct. Consequently, Kinnell demands his immediate release from state custody. Construing Kinnell's claims as arising under 28 U.S.C. § 2254, the district court dismissed his petition without prejudice for failure to exhaust state court remedies. The district court subsequently denied Kinnell's petition for a certificate of appealability and motion for a stay of state court proceedings. See 28 U.S.C. §§ 2251 & 2253.

A defendant may appeal the denial of a habeas corpus petition only if a "circuit judge or justice" issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right. Id. § 2253(c)(2); United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997). We conclude that Kinnell has failed to make the required showing.

We have thoroughly reviewed Kinnell's application for a certificate of

appealability, his brief, the district court's orders, and the entire record before us. We conclude that Petitioner's claims are meritless. Because Kinnell has not made the required showing of the denial of a constitutional right, we deny his request for a certificate of appealability and dismiss the appeal.

APPLICATION DENIED; APPEAL DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge